

## REMARKS

In the Office Action, the Examiner rejects claims 1-4, 7, 9, and 10 under 35 U.S.C. § 102(b) based on United States Patent No. 5,722,196 to Flynn. Claims 5 and 6 are rejected under 35 U.S.C. § 103(a) and the Flynn patent. In the obviousness rejection, the Examiner contends that selecting a fly-type lure is an obvious modification of Flynn.

Claims 8 and 11 are rejected under 35 U.S.C. § 103(a) based on Flynn and United States Patent No. 1,036,574 to Crane. In rejecting these claims, the Examiner admits that Flynn does not teach the pivotally connected members forming a given cross member, and relies on Crane to allege that making the cross members of Flynn in the claimed manner to be obvious.

It is respectfully contended that the rejections of independent claims 1 and 7 and dependent claims 8 and 11 are in error and the arguments in favor of the patentability of these claims are listed below under their respective claim headings.

### CLAIM 7

Critical to the Examiner's rejection under 35 U.S.C. § 102(b) is the interpretation that the side rails 16 and 18 of Flynn are the same as the claimed side rails. This interpretation is necessary in order to also conclude that Flynn teaches cross members that interconnect the side rails. The flaw in this position is that the screen of Flynn is not "aligned and attached" to the side rails 16 and 18 as is required in the claims. Instead, the screen or net of Flynn is attached to the movable rails 12 and 14. These rails can pivot with respect to the rails 16 and 18, and are moved into the position shown in Figure 1 when the seine device is being used.

Flynn does not teach that the screen or net 52 is attached to the rails 16 and 18, and the Examiner's rejection based on a position that Flynn teaches such an arrangement is totally incorrect. Since Flynn does not teach a device wherein the screen is attached to the side rails, Flynn cannot teach each and every element of claim 7, and fails to establish a *prima facie* case of anticipation. This means that the rejection of claim 7 must be withdrawn.

It is further contended that Flynn does not teach the claimed handle and support portions of the rails. Since the rails 16 and 18 of Flynn are designed to rest on the bed of the body of water, it is argued that there are no handle portions. Even if the portion of the rail that sits on the bed would be considered a support portion, Flynn still lacks a handle portion, and fails to teach this aspect of claim 7, thus mandating withdrawal of the rejection.

Moreover, there is no basis to attach the net of Flynn to the rails 16 and 18, given Flynn's own disclosure. The attachment of the net 52 to the pivoting rails 12 and 14 is critical to the operation of the Flynn device. Moving the screen 52 to the rails 16 and 18 would make Flynn inoperative for its intended purpose, and one of skill in the art would never be motivated to make such a change. Therefore, claim 7 is **not** obvious in light of the teachings of Flynn.

#### CLAIMS 8 and 11

Claims 8 and 11 are also separately patentable over the combination of Flynn and Crane. The problem with the rejection is that Crane is so unrelated to the teachings of Flynn that one of skill in the art would not be led to the conclusion of obviousness

proffered in the outstanding rejection. As admitted by the Examiner, Flynn does not teach forming the cross members into two pieces. The purpose of the two-piece cross member design of the invention is to make the device unitary in its design so that it can be folded for storage. Flynn employs a two piece design as is evident from Figures 2 and 4.

Crane on the other hand is concerned with an entirely different type of netting device that that suggested by Flynn or contemplated by the inventor. Crane teaches a device that is designed to trap minnow by suspending the device from line 12. The arms 3 are designed to spread when the device is lowered into the water, see Figure 1, and then collapse when leaving the water, see Figure 2. Flynn is a static device that sits on the bed of a body of water, with the net 52 positioned vertically to catch insects and the like. There is no telescoping feature in Flynn, and there can be no reason why one of skill in the art would apply the teachings of Crane to Flynn. At best, the Examiner is engaging in the hindsight reconstruction of the prior art in light of Applicant's own disclosure, and this is an impermissible basis to formulate a rejection based on obviousness. Therefore, the rejection as applied to claims 8 and 11 should also be withdrawn.

#### CLAIM 1

Claim 1 has been amended to clarify the invention. Claim 1 includes the limitation of claim 3 therein as part of the inserting step. This inserting step is not found in Flynn since the Flynn method merely sets the seine device on the bed of the water. There is no embedding of one or more ends of the frame, and Flynn cannot anticipate claim 1 for this reason alone.

Moreover, there is no basis to conclude that it would be obvious to modify the method taught by Flynn and include the embedding step of one or more end portions of the frame. Again, Flynn is designed to rest on the bed of water, and any allegation of obviousness would the use of Applicant's invention as a teaching template to formulate the rejection under 35 U.S.C. § 103(a). For these reasons, the rejection as applied to claim 1 must also be withdrawn.

#### SUMMARY

By the arguments and/or amendments outlined above, it is contended that each of claims 1, 7, 8, and 11 are separately patentable over the applied prior art. Flynn does not anticipate claims 1 and 7 since it lacks the limitations found therein. Further, there is no basis to arrive at a conclusion of obvious based on this prior art. Claims 8 and 11 are also patentable since the combination of Flynn and Crane does not suggest the limitations set forth therein. Claims 2-6, 9, and 10 are also patentable by reason of the respective dependency on independent claims 1 and 7.

Accordingly, the Examiner is respectfully requested to examine this application in light of this amendment and pass claims 1-11 onto issuance.

If the Examiner believes that an interview with Applicants' attorney would expedite allowance of this application, the Examiner is respectfully requested to telephone the undersigned at 202-835-1753.

The above constitutes a complete response to all issues raised in the Office Action dated March 7, 2005.

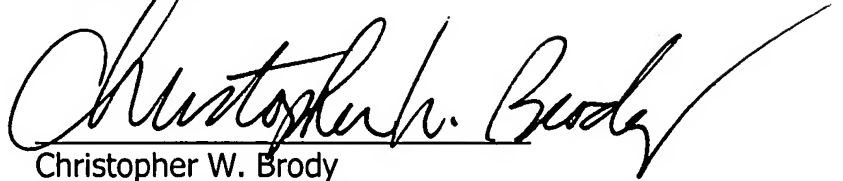
Again, reconsideration and allowance of this application is respectfully requested.

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Respectfully submitted,  
CLARK & BRODY

A handwritten signature in black ink, appearing to read "Christopher W. Brody", written over a horizontal line.

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